

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

SUBPART 225.70--AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

(Revised June 27, 2000)

225.7000 Scope of subpart.

(a) This subpart contains restrictions on the acquisition of foreign products and services, imposed by Defense appropriations and authorization acts and other statutes. Refer to the acts to verify current applicability of the restrictions.

(b) Nothing in this subpart affects the applicability of the Buy American Act or Balance of Payments Program.

225.7001 Definitions.

As used in this subpart—

(a) “Bearing components” and “miniature and instrument ball bearings” are defined in the clause at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings.

(b) “Hand or measuring tools” means those tools listed in Federal supply classifications 51 and 52, respectively.

(c) “Possessions,” as used in the phrase “United States or its possessions,” includes Puerto Rico.

(d) “Specialty metals” is defined in the clause at 252.225-7014, Preference for Domestic Specialty Metals.

225.7002 Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools.

225.7002-1 Restrictions.

(a) In accordance with Section 9005 of Pub. L. 102-396, as amended (10 U.S.C. 2241 note, Limitations on Food, Clothing, and Specialty Metals Not Produced in the United States), and Section 8109 of Pub. L. 104-208, do not acquire supplies consisting in whole or in part of any of the following, that have not been grown or produced in the United States or its possessions—

(1) Food, but this does not restrict acquisition of foods manufactured or processed in the United States or its possessions;

(2) Clothing;

(3) Tents, tarpaulins, or covers;

(4) Cotton and other natural fiber products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), but this does not restrict acquisition of cotton or wool reprocessed or reused in the United States or its possessions;

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

- (5) Woven silk or woven silk blends;
 - (6) Spun silk yarn for cartridge cloth;
 - (7) Synthetic fabric or coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics;
 - (8) Canvas products; or
 - (9) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing any of the listed fibers, yarns, fabrics, or materials.
- (b) Do not acquire specialty metals, including stainless steel flatware, that were not melted in steel manufacturing facilities located within the United States or its possessions.
- (c) Do not acquire hand or measuring tools that were not produced in the United States or its possessions.

225.7002-2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in 225.7002-1—

- (a) Any of the items in 225.7002-1(a) or (b), if the Secretary concerned, or designee, determines that they cannot be acquired when needed in a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions at U.S. market prices.
- (b) Outside the United States—
 - (1) In support of combat operations;
 - (2) Perishable foods by activities located outside the United States for their personnel; or
 - (3) Emergency acquisitions by such activities for their personnel.
- (c) Acquisitions by vessels in foreign waters.
- (d) Acquisitions of those supplies listed in FAR 25.108(d)(1), unless the supplies are hand or measuring tools.
- (e) Acquisitions not exceeding the simplified acquisition threshold.
- (f) Acquisitions of end items incidentally incorporating cotton or wool, for which the estimated value of the cotton or wool is not more than 10 percent of the total price of the end item; provided the estimated value of the cotton or wool does not exceed the simplified acquisition threshold.
- (g) Supplies purchased specifically for commissary resale.

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

(h) Purchases of specialty metals by subcontractors at any tier for programs, except—

- (1) Aircraft;
- (2) Missile and space systems;
- (3) Ships;
- (4) Tank-automotive;
- (5) Weapons; and
- (6) Ammunition.

(i) Purchases of specialty metals and chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country (see 225.872).

(j) Purchases of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but not the purchase of the synthetic or coated synthetic fabric itself), if—

(1) The fabric is to be used as a component of an end item that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(i) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(ii) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(iii) Upholstered seats (whether for household, office, or other use); and

(iv) Parachutes (Federal Supply Class 1670); or

(2) The fibers and yarns are para-aramid fibers and yarns manufactured in—

(i) The Netherlands; or

(ii) Another qualifying country (see 225.872) if the Under Secretary of Defense (Acquisition, Technology, and Logistics) makes a determination in accordance with Section 807 of Pub. L. 105-261 that—

(A) Procuring articles that contain only para-aramid fibers and yarns manufactured from suppliers within the United States or its possessions would result in sole source contracts or subcontracts for the supply of such para-aramid fibers and yarns;

(B) Such sole source contracts or subcontracts would not be in the best interest of the Government or consistent with the objectives of the Competition in Contracting Act (10 U.S.C. 2304); and

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

(C) The qualifying country permits U.S. firms that manufacture para-aramid fibers and yarns to compete with foreign firms for the sale of para-aramid fibers and yarns in that country.

225.7002-3 Contract clauses.

Unless an exception is known to apply—

(a) Use the clause at 252.225-7012, Preference for Certain Domestic Commodities, in all solicitations and contracts which meet or exceed the simplified acquisition threshold.

(b) Use the clause at 252.225-7014, Preference for Domestic Specialty Metals, in all solicitations and contracts over the simplified acquisition threshold that require delivery of an article containing specialty metals. Use the clause with its Alternate I in all solicitations and contracts over the simplified acquisition threshold requiring delivery, for one of the following major programs, of an article containing specialty metals—

- (1) Aircraft;
- (2) Missile and space systems;
- (3) Ships;
- (4) Tank-automotive;
- (5) Weapons; or
- (6) Ammunition.

(c) Use the clause at 252.225-7015, Preference for Domestic Hand or Measuring Tools, in all solicitations and contracts over the simplified acquisition threshold calling for delivery of hand or measuring tools.

225.7003 Restriction on overseas military construction.

For restriction on award of military construction contracts to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.274(a).

225.7004 Restriction on overseas architect-engineer services.

For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see 236.602-70.

225.7005 Waiver of certain restrictions.

(a) Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:

(1)(i) The Under Secretary of Defense (Acquisition, Technology, and Logistics), without power of delegation, may waive the restriction for a particular item for a particular foreign country upon determination that—

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

(A) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(B) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(ii) A notice of the determination to exercise the waiver authority must be published in the Federal Register and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(iii) Such waiver shall be in effect for a period not greater than 1 year.

(iv) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, such waiver shall be applied as directed or authorized in the waiver to—

(A) Subcontracts entered into on or after the effective date of the waiver; and

(B) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

(2) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(i) The restriction would cause unreasonable delays.

(ii) Satisfactory quality items manufactured in the United States or Canada are not available.

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(iv) Application of the restriction is not in the national security interests of the United States.

(v) Application of the restriction would adversely affect a U.S. company.

(3) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

(b) In accordance with the provisions of paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom, including air circuit breakers for naval vessels and totally enclosed lifeboats (see 225.7016 and 225.7022). This waiver applies to—

(1) Procurements under solicitations issued on or after August 4, 1998; and

(2) Subcontracts and options under contracts entered into prior to August 4, 1998, under the conditions described in paragraph (a)(1)(iv) of this section.

225.7006 Restrictions on construction or repair of vessels in foreign shipyards.

10 U.S.C. 7309 restricts constructing or repairing vessels in foreign shipyards.

(a) Do not award a contract to construct either of the following in a foreign shipyard—

(1) A vessel constructed for any of the armed forces; or

(2) A major component of the hull or superstructure of any such vessel.

(b) Do not overhaul, repair, or maintain in a foreign shipyard, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States. This restriction does not apply to voyage repairs.

225.7007 Restriction on acquisition of foreign buses.

225.7007-1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or Canada.

225.7007-2 Applicability.

Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

225.7007-3 Exceptions.

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured outside the United States and Canada are needed for temporary use because buses manufactured in the United States or Canada are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States or Canada.

(b) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured outside the United States and Canada may be used for temporary periods of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

(c) Buses manufactured outside the United States and Canada are available at no cost to the U.S. Government.

(d) The acquisition is for an amount that does not exceed the simplified acquisition threshold.

225.7007-4 Waiver.

The waiver criteria at 225.7005(a) apply to this restriction.

225.7008 Restriction on research and development.

(a) Public Law 92-570 precludes use of DoD appropriations for award to any foreign corporation, organization, person, or entity for research and development in connection with any weapon system or other military equipment if there is a U.S. corporation, organization, person, or entity—

(1) Equally competent; and

(2) Willing to perform at a lower cost.

(b) The statutory restriction in paragraph (a) of this section does not change the rules for selecting research and development contractors in FAR Part 35. However, when a U.S. source and a foreign source are equally competent, award to the source that will provide the services at the lower cost.

225.7009 Reserved.

225.7010 Restriction on certain chemical weapons antidote.

225.7010-1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see Subpart 208.72), do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the chemical weapons antidote or component is manufactured in the United States or Canada by a company that—

(a) Is a producer under the industrial preparedness program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

225.7010-2 Exception.

The restriction of 225.7010-1 does not apply if the acquisition is for an amount that does not exceed the simplified acquisition threshold.

225.7010-3 Waiver.

The waiver criteria at 225.7005(a) apply to this restriction.

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

225.7011 Restriction on Ballistic Missile Defense research, development, test, and evaluation.

225.7011-1 Definitions.

“Competent,” “foreign firm,” and “U.S. firm” have the meanings given in the provision at 252.225-7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense RDT&E.

225.7011-2 Restriction.

(a) Section 222 of the Defense Authorization Act for FY1988 and 1989 (Pub. L. 100-180) prohibits the award of certain contracts for the conduct of Ballistic Missile Defense (BMD) Program research, development, test, and evaluation (RDT&E), to foreign governments or firms unless the Secretary of Defense certifies to Congress in writing at any time during the applicable fiscal year that work cannot be competently performed by a U.S. firm at a price equal to or less than the price of the foreign government or firm.

(b) For purposes of implementing this section, heads of contracting activities are authorized to make this certification (see 225.7011-3(b)).

(c) Except as provided in 225.7011-3, do not use any funds appropriated to, or for the use of, DoD to enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement, with a foreign government or firm if the contract provides for the conduct of RDT&E in connection with the BMD.

(d) This prohibition is not intended to deny access to foreign expertise when contract performance requires a level of competency unavailable in the United States.

225.7011-3 Exceptions.

This prohibition shall not apply—

(a) To contracts awarded to a foreign government or firm if the contracting officer determines that—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems; or

(3) The foreign government or foreign firm agrees to share a substantial portion of the total contract cost. Consider the foreign share as substantial if it is equitable with respect to the relative benefits to be derived from the contract by the United States and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the cost should be correspondingly higher; or

(b) If the head of the contracting activity certifies in writing, before contract award, that a contract for research, development, testing, or evaluation (other than for RDT&E described in paragraph (a)(2) of this subsection) cannot be competently performed by a U.S. firm at a price equal to or less than the price at which the RDT&E would be performed by a foreign government or firm.

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

225.7011-4 Procedures.

(a) When awarding a prime contract to a foreign government or firm under 225.7011-3(b), the contracting officer or source selection authority, as applicable, shall make a determination that will be the basis for the certification.

(1) The determination must—

(i) Describe the contract effort;

(ii) State the number of proposals solicited and received from both U.S. and foreign firms;

(iii) Identify the proposed awardee and the amount of the contract;

(iv) State that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the broad agency announcement; and

(v) State that the effort cannot be competently performed by a U.S. firm at a price equal to, or less than, the price at which it would be performed by the foreign awardee.

(2) When either a broad agency announcement (BAA) or program research and development announcement (PRDA) is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, the determination must not be merely conclusory.

(i) The determination must specifically explain its basis, include a description of the method used to determine the competency of U.S. firms, and describe the cost or price analysis performed.

(ii) Alternately, the determination may contain—

(A) A finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a BAA or PRDA, or other solicitation document without any technical guidance from the program office; and

(B) A finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive acquisition is prohibited.

(b) Forward a copy of the certification (from 225.7011-3(b)) and, as appropriate, the determination or justification and approval (J&A) within 30 days of contract award to the Ballistic Missile Defense Organization, ATTN: BMDO/DRI, 7100 Defense Pentagon, Washington, DC 20301-7100, if award is based on—

(1) A determination under paragraph (a) of this subsection;

(2) Other than full and open competition under FAR Subpart 6.3; or

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

- (3) An unsolicited proposal under FAR Subpart 15.6.

225.7011-5 Solicitation provision.

Use the provision at 252.225-7018, Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Ballistic Missile Defense RDT&E, in all competitively negotiated BMD solicitations for research, development, test, and evaluation, unless foreign participation is otherwise excluded.

225.7012 Restrictions on anchor and mooring chain.

225.7012-1 Restrictions.

(a) Under Pub. L. 101-511, Section 8041, and similar sections in subsequent Defense appropriations acts, DoD appropriations for fiscal years 1991 and after may not be used to acquire welded shipboard anchor and mooring chain, four inches in diameter and under, unless—

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) Acquisition of welded shipboard anchor and mooring chain, four inches in diameter and under, when used as a component of a naval vessel, is also restricted under 10 U.S.C. 2534(a)(3)(ii). However, the more stringent restriction under 225.7012-1(a) takes precedence.

225.7012-2 Waiver.

The restriction in 225.7012-1(a) may be waived by the Secretary of the Department responsible for acquisition, on a case-by-case basis, where sufficient domestic suppliers are not available to meet DoD requirements on a timely basis and the acquisition is necessary to acquire capability for national security purposes.

(a) Document the waiver in a written D&F containing—

(1) The factors supporting the waiver; and

(2) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(b) Provide a copy of the D&F to the House and Senate Committees on Appropriations.

225.7012-3 Contract clause.

Use the clause at 252.225-7019, Restriction on Acquisition of Foreign Anchor and Mooring Chain, in all solicitations and contracts—

(a) Using fiscal year 1991 or later funds; and

(b) Requiring welded shipboard anchor or mooring chain of four inches in diameter or less.

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

225.7013 Reserved.

225.7014 Reserved.

225.7015 Restriction on night vision image intensifier tubes and devices.

225.7015-1 Restriction.

In accordance with Pub. L. 101-165 and 101-511, fiscal years 1990 and 1991 funds may not be used to acquire second and third generation night vision image intensifier tubes and devices unless they are manufactured in the United States or Canada.

225.7015-2 Exception.

Second and third generation night vision image intensifier tubes and devices manufactured outside the United States or Canada may be acquired if—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The Secretary of the Department responsible for the acquisition certifies to the House and Senate Committees on Appropriations that the acquisition of tubes and devices manufactured outside the United States or Canada is necessary in order to acquire capability for national security purposes.

225.7015-3 Contract clause.

Use the clause at 252.225-7024, Restriction on Acquisition of Night Vision Image Intensifier Tubes and Devices, in all solicitations and contracts which—

(a) Use fiscal year 1990 or 1991 funds; and

(b) Require second and third generation night vision image intensifier tubes and devices.

225.7016 Restriction on air circuit breakers for naval vessels.

225.7016-1 Restriction.

In accordance with 10 U.S.C. 2534 and 225.7005(b), do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States, Canada, or the United Kingdom.

225.7016-2 Exceptions.

This restriction does not apply if—

(a) The acquisition is for an amount that does not exceed the simplified acquisition threshold; or

(b) Spare or repair parts are needed to support air circuit breakers manufactured outside the United States. Support includes the purchase of spare air circuit breakers where those from alternate sources are not interchangeable.

225.7016-3 Waiver.

The waiver criteria at 225.7005(a) apply to this restriction.

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

225.7016-4 Contract clause.

Use the clause at 252.225-7029, Preference for United States or Canadian Air Circuit Breakers, in all solicitations and contracts requiring air circuit breakers for naval vessels, unless—

- (a) An exception under 225.7016-2 is known to apply; or
- (b) A waiver has been granted in accordance with 225.7016-3.

225.7017 Restriction on carbon, alloy, and armor steel plate.

225.7017-1 Restriction.

In accordance with Section 8111 of Pub. L. 102-172, and similar sections in subsequent appropriations acts, all carbon, alloy, and armor steel plate in Federal stock class 9515 or described by American Society for Testing Materials (ASTM) or American Iron and Steel Institute (AISI) specifications, purchased by the Government or a contractor for use in a Government-owned facility or in a facility controlled (e.g., leased) by DoD, shall be melted and rolled in the United States or Canada.

225.7017-2 Exceptions.

This restriction does not apply to—

- (a) Contracts in effect as of November 26, 1991;
- (b) Direct purchases by DoD using other than fiscal year 1992 or subsequent year funds; or
- (c) Purchases by contractors unless the prime contract uses fiscal year 1992 or subsequent year funds.

225.7017-3 Waiver.

The restriction may be waived by the Secretary of the department responsible for acquisition, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

- (a) Adequate U.S. or Canadian supplies are not available to meet DoD requirements on a timely basis; and
- (b) The acquisition must be made in order to acquire capability for national security purposes.

225.7017-4 Contract clause.

Unless an exception under 225.7017-2 is known to apply or a waiver has been granted in accordance with 225.7017-3, use the clause at 252.225-7030, Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate, in all solicitations and contracts which—

- (a) Require the delivery to the Government of carbon, alloy, or armor steel plate which will be used in a facility owned by the Government or under the control of DoD; or

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

(b) Require contractors operating in a Government-owned facility or a facility under the control of DoD to purchase carbon, alloy, or armor steel plate.

225.7018 Restriction on four ton dolly jacks.

225.7018-1 Restriction.

In accordance with Section 9108 of Pub. L. 102-396, no fiscal year 1993 funds shall be used to procure four ton dolly jacks manufactured outside the United States.

225.7018-2 Waiver.

The restriction in 225.7018-1 may be waived on a case-by-case basis where the Secretary of the Military Department or the Under Secretary of Defense (Acquisition, Technology, and Logistics) certifies to the Committees on Appropriations of the House and Senate that—

(a) Adequate domestic supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7018-3 Contract clause.

Use the clause at 252.225-7033, Restriction on Acquisition of Four Ton Dolly Jacks, in solicitations and contracts that use fiscal year 1993 funds for the acquisition of four ton dolly jacks.

225.7019 Restrictions on ball and roller bearings.

225.7019-1 Restrictions.

(a) In accordance with 10 U.S.C. 2534 and 225.7019-3(b)(5), through fiscal year 2000, do not acquire ball and roller bearings or bearing components that are not manufactured in the United States, Canada, or the United Kingdom.

(b) In accordance with Section 8099 of Pub. L. 104-61 and similar sections in subsequent Defense appropriation acts, do not use fiscal year 1996 or subsequently appropriated funds to acquire ball and roller bearings other than those produced by a domestic source and of domestic origin, i.e., bearings and bearing components manufactured in the United States or Canada.

225.7019-2 Exceptions.

(a) The restriction in 225.7019-1(a) does not apply to—

(1) Acquisitions using simplified acquisition procedures, unless ball or roller bearings or bearing components are the end items being purchased;

(2) Purchases of commercial items incorporating ball or roller bearings;

(3) Miniature and instrument ball bearings when necessary to meet urgent military requirements;

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

(4) Items acquired overseas for use overseas; or

(5) Ball and roller bearings or bearing components or items containing bearings for use in a cooperative or co-production project under an international agreement. This exception does not apply to miniature and instrument ball bearings.

(b) The restriction in 225.7019-1(b) does not apply to contracts for acquisition of commercial items or subcontracts for acquisition of commercial items or commercial components (see 212.503(a)(xi) and 212.504(a)(xxvi)).

225.7019-3 Waiver.

(a) The head of the contracting activity may waive the restriction in 225.7019-1(a)—

(1) Upon execution of a determination and findings that—

(i) No domestic (U.S. or Canadian) bearing manufacturer meets the requirement;

(ii) It is not in the best interests of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing. This determination must be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delay. A finding that a cost is unreasonable should take into consideration DoD policy to assist the domestic industrial mobilization base. Contracts should be awarded to domestic bearing manufacturers to increase their capability to reinvest and become more competitive;

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada;

(iv) Application of the restriction is not in the national security interests of the United States; or

(v) Application of the restriction would adversely affect a U.S. company.

(2) If the acquisition is for an amount less than the simplified acquisition threshold and simplified acquisition procedures are being used.

(3) For multiyear contracts or contracts exceeding 12 months, except those for miniature and instrument ball bearings, only if—

(i) The head of the contracting activity executes a determination and findings in accordance with paragraph (a) of this subsection;

(ii) The contractor submits a written plan for transitioning from the use of nondomestic to domestically manufactured bearings;

(iii) The plan—

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

(A) States whether a domestically manufactured bearing can be qualified, at a reasonable cost, for use during the course of the contract period;

(B) Identifies any bearings that are not domestically manufactured, their application, and source of supply; and

(C) Describes, including cost and timetable, the transition to a domestically manufactured bearing. (The timetable for the transition should normally take no longer than 24 months from the date the waiver is granted); and

(iv) The contracting officer accepts the plan and incorporates it in the contract.

(4) For miniature and instrument ball bearings, only if the contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

(b)(1) The Under Secretary of Defense (Acquisition, Technology, and Logistics), without power of delegation, may waive the restriction in 225.7019-1(a) for a particular foreign country upon determination that—

(i) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(ii) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(2) A notice of the determination to exercise the waiver authority must be published in the Federal Register and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(3) Such waiver shall be in effect for a period not greater than 1 year.

(4) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, such waiver shall be applied as directed or authorized in the waiver to—

(i) Subcontracts entered into on or after the effective date of the waiver; and

(ii) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

(5) In accordance with the provisions of paragraphs (b)(1) through (b)(3) of this subsection, the Under Secretary of Defense (Acquisition, Technology, and

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

Logistics) has waived the restrictions of 10 U.S.C. 2534(a)(5) for ball and roller bearings manufactured in the United Kingdom. This waiver applies to—

(i) Procurements under solicitations issued on or after August 4, 1998; and

(ii) Subcontracts and options under contracts entered into prior to August 4, 1998, under the conditions described in paragraph (b)(4) of this subsection.

(c) The Secretary of the department responsible for the acquisition may waive the restriction in 225.7019-1(b) on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(1) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(2) The acquisition must be made in order to acquire capability for national security purposes.

225.7019-4 Contract clause.

Use the clause at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings, in all solicitations and contracts, unless—

(a) The restrictions in 225.7019-1 do not apply or a waiver has been granted; or

(b) The contracting officer knows that the items being acquired do not contain ball or roller bearings.

225.7020 Reserved.

225.7021 Restriction on aircraft fuel cells.

225.7021-1 Restriction.

In accordance with Section 8090 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139) and Section 8075 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335), do not purchase aircraft fuel cells unless they are produced or manufactured in the United States by a domestic-operated entity.

225.7021-2 Waiver.

The restriction in 225.7021-1 may be waived by the Secretary of the department responsible for the acquisition, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7021-3 Contract clause.

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

Unless a waiver has been granted in accordance with 225.7021-2, use the clause at 252.225-7038, Restriction on Acquisition of Aircraft Fuel Cells, in all solicitations and contracts which—

- (a) Use fiscal year 1994 or 1995 funds; and
- (b) Require delivery of aircraft fuel cells.

225.7022 Restrictions on totally enclosed lifeboat survival systems.

225.7022-1 Restrictions.

(a) In accordance with Section 8124 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139) and Section 8093 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335), do not purchase a totally enclosed lifeboat survival system, which consists of the lifeboat and associated davits and winches, unless 50 percent or more of the components are manufactured in the United States, and 50 percent or more of the labor in the final manufacture and assembly of the entire system is performed in the United States.

(b) In accordance with 10 U.S.C. 2534(a)(3)(B) and 225.7005(b), do not purchase a totally enclosed lifeboat that is a component of a naval vessel, unless it is manufactured in the United States, Canada, or the United Kingdom. In accordance with 10 U.S.C. 2534(h), this restriction may not be implemented through the use of a contract clause or certification. Implementation shall be effected through management and oversight techniques that achieve the objective of the restriction without imposing a significant management burden on the Government or the contractor involved.

225.7022-2 Exceptions.

The restriction in 225.7022-1(b) does not apply if—

- (a) The acquisition is for an amount that does not exceed the simplified acquisition threshold; or
- (b) Spare or repair parts are needed to support totally enclosed lifeboats manufactured outside the United States.

225.7022-3 Waiver.

The waiver criteria at 225.7005(a) apply only to the restriction of 225.7022-1(b).

225.7022-4 Contract clause.

Use the clause at 252.225-7039, Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems, in all solicitations and contracts which require delivery of totally enclosed lifeboat survival systems.

225.7023 Restriction on supercomputers.

225.7023-1 Restriction.

In accordance with Section 8112 of Pub. L. 100-202, and similar sections in subsequent Defense Appropriations Acts, do not purchase any supercomputer that is not manufactured in the United States.

Defense Federal Acquisition Regulation Supplement

Part 225—Foreign Acquisition

225.7023-2 Waiver.

The restriction in 225.7023-1 may be waived by the Secretary of Defense on a case-by-case basis, after the Secretary of Defense certifies to the Armed Services and Appropriations Committees of Congress that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7023-3 Contract clause.

Use the clause at 252.225-7011, Restriction on Acquisition of Supercomputers, in solicitations and contracts for the acquisition of supercomputers.